

DARLENE Y. HAYMES ET AL.

IBLA 80-410

Decided August 18, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, holding mining claims N MC 71376 through 71406 abandoned and void.

Affirmed as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Pursuant to 43 CFR 3833.2-1(a) the owner of an unpatented mining claim located on or before Oct. 21, 1976, must have filed in the proper BLM office on or before Oct. 22, 1979, or on or before Dec. 30 of each calendar year following the calendar year of recording with BLM, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Mining claims located after the enactment of the Federal Land Policy and Management Act of Oct. 21, 1976, must be deemed abandoned and void if a copy of the notice of location or certificate of location is not filed with the proper Bureau of Land Management Office within 90 days after the date of location of such claims.

3. Estoppel

Reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by a statute for his failure to comply with its requirements.

APPEARANCES: Darlene Y. Haymes, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Darlene Y. Haymes appeals 1/ from a decision, dated February 5, 1980, of the Nevada State Office, Bureau of Land Management (BLM), declaring lode mining claims (see Appendix) N MC 71376 through 71417 abandoned and void for failure to file evidence of annual assessment work or notice of intention to hold the claims for 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulations 43 CFR 3833.2-1(a), (c) and 43 CFR 3833.4(a).

The claims involved in this appeal were located between June 12, 1972, and August 27, 1978. The decision appealed from states that no assessment statement (proof of labor) was received by BLM prior to October 22, 1979, as required by FLPMA, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Copies of all location notices were originally submitted to BLM on June 26, 1979, with a check for \$210, which was uncollectible. On October 17, 1979, a cashier's check in the amount of \$210 was filed.

1/ The BLM decision was captioned "Dave Haymes." In her appeal Darlene Haymes complained that this was the third or fourth communication to David Haymes sent to her address. She indicated, however, that she is the representative for all claim holders on filings "concerning map No. 50406." This map, in serial No. N MC 71376 (pertaining to a notice of location for David Haymes), on the outside gives Darlene Y. Haymes' name and address and her statement, "Acting as Spokesman for the company of people represented on map herein." The locators, with the names of persons listed on the notices who were shown to have located the particular claim in behalf of the locator, are shown on the Appendix. Darlene Haymes is either the locator, co-locator, agent or co-agent, shown on all but two of the location notices (namely, N MC 71378 and N MC 71379). Her appeal is filed in behalf of all the mining claimants. Because Darlene Haymes had actual notice of the decision and has filed the appeal therefrom, any deficiencies in naming the claimants in the BLM decision, have been mooted.

Appellants assert in their statement of reasons on appeal that their compliance with the recording regulations and their payment of the requisite filing fees indicates that they intended to hold and work the claims in question.

[1] Section 314 of FLPMA, 43 U.S.C. § 1744 (1976), establishes mandatory procedures for the recordation of information concerning mining claims located on Federal lands. All but two of the claims involved here were located prior to October 21, 1976. As to claims located prior to that date, the pertinent regulation, 43 CFR 3833.2-1(a), provides in relevant part:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

Pursuant to the above quoted regulation, evidence of annual assessment work or a notice of intention to hold the claim was required for each claim.

In the event a mining claimant fails to comply with the recordation requirements, the regulations provide:

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1 * * * and 3833.2 * * * within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill or tunnel site and it shall be void.

When appellants failed to file either an affidavit of assessment work or notice of intention to hold, BLM properly held the claims N MC 71376 through 71386 and N MC 71389 through 71417 to have been abandoned and declared them void. Josephine M. Buchen, 46 IBLA 298 (1980); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Carruthers, 38 IBLA 77 (1978); Donald H. Little, 37 IBLA 1 (1978); Donald L. Nordwick, 36 IBLA 238 (1978).

[2] In its decision BLM failed to differentiate between those claims located prior to October 21, 1976, and the Badger lode claims Nos. 10 and 11, N MC 71387 and 71388 which were located on August 27, 1978. Those claims should have been declared abandoned and void for a different reason. As they were located after the enactment of FLPMA,

they were subject to that part of section 314(b) of the Act which provides that the owner of mining claims located after the date of the Act:

shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground.

43 U.S.C. § 1744(b). Paragraph (c) of section 314 makes failure to file the instruments required by the provision quoted above a conclusive presumption of abandonment. Therefore, as there is nothing in the record to show this requirement was met, the Badger lode claims Nos. 10 and 11 should have been declared abandoned and void for this reason and the decision below is modified accordingly.

[3] Darlene Haymes asserts that: "[A]fter filing the recording of my claims I was told (by a BLM employee) I did not have to worry about filing assessment proof of labor until next year (1980) – on or before a date which would be posted at a later time" (emphasis in original). If such an instruction was given (and there is no corroborating proof that it was), it was contrary to the law and to written notices and information disseminated to the public generally. In any event, as has been held on previous occasions, and as the pertinent regulation provides, reliance upon erroneous advice by BLM employees cannot estop the United States or confer on an applicant any right not authorized by law. Paul S. Coupey, 35 IBLA 112, 116 (1978); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978); Charles House, 33 IBLA 308 (1978), and cases cited; 43 CFR 1810.3(b) and (c). Accordingly, reliance upon erroneous advice or incomplete information provided by BLM employees cannot relieve the owner of a mining claim of an obligation imposed on him by statute or relieve him of the consequences imposed by statute for his failure to comply with its requirements. Clair R. Caldwell, 43 IBLA 139 (1979).

Neither FLPMA nor the regulations provide for any leeway in the application of the penalty for failure to file this information. Sylvan S. Hewitt, 47 IBLA 393 (1980).

We note that appellants may relocate these claims if for locatable minerals and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming no intervening closure of the land to mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision declaring lode mining claims N MC 71376 through 71386 and

N MC 71389 through 71417 abandoned and void is affirmed and that part of the decision appealed from, declaring N MC 71387 and 71388 abandoned and void is affirmed for the reason stated in this opinion.

Joan B. Thompson
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

APPENDIX

| <u>Mining Claim</u> <u>Serial No.</u> | <u>Claim Name</u> | <u>Date</u> <u>Located</u> | <u>Locators</u> |
|--|--------------------------------|-------------------------------|--|
| N MC 71376 | Dave's Gold | 08-12-74 | George Harvey and Darlene Haymes for Dave Haymes |
| N MC 71377 | Little Sister #1 | 08-12-74 | George Harvey for Janet Haymes and Darlene Y. Haymes |
| N MC 71378 | Bear #1 | 08-12-74 | Daryl E. Haymes |
| N MC 71379 | Big Horn #1 | 08-12-74 | George Harvey for Daryl E. Haymes |
| N MC 71380 | Summit #1 | 06-22-76 | G. R. Harvey and Darlene Y. Haymes for Moses and Maria Alvarez |
| N MC 71381 | Freedom Claim #1 | 08-15-72 | Darlene Y. Haymes; Daryl E. Haymes; and George R. Harvey |
| N MC 71382- 71386 | Badger #1 through #5 | 07-21-74 | George R. Harvey; Darlene Y. Haymes |
| N MC 71387- 71388 | Badger #10 and #11 | 08-27-78 | Darlene Y. Haymes; Richard R. Haymes |
| N MC 71389 | Coyote Placer #2 | 09-02-75 | George Harvey and Darlene Haymes for Cecil Brock |
| N MC 71390 | Coyote Placer #4 | 10-01-74 | George Harvey for Darlene Haymes |
| N MC 71391 | Coyote Placer #5 | 10-29-74 | George R. Harvey and Darlene Y. Haymes for David W. Haymes |
| N MC 71392 | Coyote Placer #6 | 10-01-74 | George R. Harvey and Darlene Y. Haymes for Daryl E. Haymes |
| N MC 71393 | Coyote Placer #12 | 10-01-74 | George Harvey and Darlene Haymes for Mabel V. Walton |
| N MC 71394- 71400 | Lucky Strike #1 through #7 | 06-12-72 | George R. Harvey for for Darlene Y. Haymes |
| N MC 71401- 71406 | Lucky Strike #8 through #13 | 08-05-74 | George R. Harvey; Darlene Y. Haymes |

N MC 71407- Lucky Strike #14 08-22-74 Darlene Y. Haymes;
71409 through #16 George R. Harvey

N MC 71410- Lucky Strike #17 04-07-76 George Harvey
71417 through #24 for Darlene Haymes

49 IBLA 248

